



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: FOP - 175706

PRELIMINARY RECITALS

Pursuant to a petition filed on July 20, 2016, under Wis. Admin. Code §HA 3.03, to review a decision by the Brown County Human Services regarding FoodShare benefits (FS), a hearing was held on October 11, 2016, by telephone.

The issue for determination is whether the agency correctly determined that petitioner is responsible for an overpayment of FoodShare benefits in the amount of \$405 as a result of his daughter having been included in his household.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: Chris Van Hefty
Brown County Human Services
Economic Support-2nd Floor
111 N. Jefferson St.
Green Bay, WI 54301

ADMINISTRATIVE LAW JUDGE:

Kristin P. Fredrick
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Brown County.

2. On February 7, 2012, the petitioner completed an online application for FoodShare benefits. The application listed three people as members of the petitioner's household including: the petitioner, his then live-in girlfriend and one male infant child.
3. On February 16, 2012, the agency conducted a phone interview with the petitioner's then live-in girlfriend. A case summary of that interview was prepared, which listed five members of the household, including the girlfriend's oldest daughter and the petitioner's daughter, [REDACTED], from another relationship on top of the original three that the petitioner had listed in his online application. Based upon and following that interview, the petitioner's application for FoodShare was merged with his live-in girlfriend's existing open FoodShare case.
4. Subsequent to the agency interview, the petitioner's girlfriend reviewed, corrected and signed the case summary statement advising the agency that her daughter no longer resided in the household and requesting that she be removed. No similar correction was made with respect to the petitioner's daughter [REDACTED].
5. On or about April 11, 2012, the agency discovered that the petitioner's daughter [REDACTED] resided with her mother and not the petitioner.
6. On April 18, 2012, a request for verification was sent to the petitioner's girlfriend with a notation that [REDACTED] would need to provide verification that [REDACTED] was in fact residing in the household or the agency would be seeking recovery of an overpayment.
7. The April 18, 2012 notice was not sent separately to the petitioner because he had been added as a member of his then live-in girlfriend's household when his application was merged with her existing FS case.
8. On May 12, 2016, the agency sent a FoodShare Overpayment Notice to the petitioner informing him that he was overpaid FoodShare benefits in the amount of \$405 from February 7, 2012 to April 30, 2012.

DISCUSSION

Pursuant to federal regulations, the Department is required to recover all FoodShare ("FS") overpayments. 7 C.F.R. §273.18(b). An overpayment occurs when an FS household receives more FS than it is entitled to receive. 7 C.F.R. §273.18(c). The federal FS regulations provide that the agency shall establish a claim against an FS household that was overpaid, even if the overpayment was caused by agency error or even if the client error was unintentional. 7 C.F.R. §273.18(b)(3); *FoodShare Wisconsin Handbook*, § 7.3.1.1 and §7.3.2.1. Overpayments due to "agency error" may only be recovered if they were issued during the twelve months prior to the date the agency discovered the overpayment. *FS Handbook*, § 7.3.2.1. Overpayments due to "client error" may only be recovered if they were issued during the six years prior to the date the agency discovered the overpayment. *Id.* In other words, a FS recipient who receives a FS benefit overpayment during the twelve months prior to the Department's discovery of that overpayment may be required to repay the overpaid benefits regardless of who bears the "fault" for causing the overpayment. Finally, all adult members of an FS household are liable for an overpayment. 7 C.F.R. §273.18(a)(4); *FS Handbook*, §7.3.1.2.

In the present matter, the alleged overpayment occurred from February through April 2012. The overpayment was discovered in April 2012. The department was therefore within the permissible time period to seek recovery regardless of whether the overpayment occurred as a result of client or agency error. Although petitioner correctly points out that his online application did not include a request for FS benefits for his daughter and further that he did not participate in the application interview nor sign the case summary statement that erroneously included his daughter [REDACTED] in the FS application, the agency was entitled to rely upon the interview and signature of the petitioner's then live-in girlfriend as a responsible adult in the FS assistance group and household. *FS Handbook*, § 2.1.3.4. Regardless of who

was at fault for the error, under federal regulations, because petitioner was an adult member of the FS household, he is liable for any overpayment and must therefore repay any benefits that he and his household were overpaid during that time period.

CONCLUSIONS OF LAW

1. The petitioner was overpaid FS benefits from February 7, 2012 through April 30, 2012.
2. The agency is entitled to recoup the overpayment of FS benefits in the amount of \$405.

THEREFORE, it is

ORDERED

That the petition for review herein be, and the same hereby is, dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

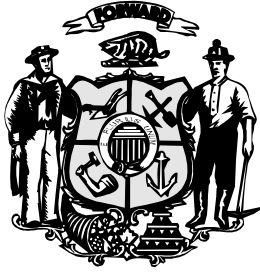
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 13th day of October, 2016

\s _____
Kristin P. Fredrick
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on October 13, 2016.

Brown County Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability